

These Customer Terms & Conditions ("**Customer Terms**"), together with an Order Form ("**Order Form**") and related Additional Terms, constitute the entire agreement between the parties (the "**Agreement**").

Company and Customer are sometimes hereinafter referred to jointly as the "Parties" or singularly as a "Party."

## 1. Definitions.

1. "**Active Clients**" means any of Customer's Clients that have access to or benefits from TapClicks Platform.
2. "**Affiliate**" means any entity directly or indirectly controlling, controlled by, or under common control with a Party to the Agreement. For purposes of this definition, "control" when used with respect to any specified entity means the power to direct the management and policies of such entity, directly or indirectly, through the ownership of voting securities; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
3. "**Client**" as specified in the Order Form, may be used to represent advertisers, locations, campaigns, or any other means of assigning or otherwise providing third-party services through the Company Platform. Clients may or may not have a user assigned to them.
4. "**Company**" or "**TapClicks**" means Tapclicks, Inc., a Delaware corporation, with its principal place of business at 3031 Tisch Way, Suite 900, San Jose, CA 95128.
5. "**Company Tools**" means Company's pre-existing Intellectual Property Rights including its know how, design tools, methodologies, research, processes, commercially available "shrink wrap" Product(s), Company's online software and platform, or other means that may be used to conceive, design, assemble, manage or deliver the Deliverables, and improvements or modifications to such Company Tools.
6. "**Customer**" means the company or other legal entity accepting this Agreement, and Affiliates of that company or entity.
7. "**Data Integrations**," as defined and used in the Order Form, are connections by third-party technology that transfer data to the Company's platform for use in its Products.
8. "**Deliverables**" means materials, tools, website access and other resources that enable an End User to use, access, and receive the Product(s).
9. "**Effective Date**" of this Agreement is defined in the Order Form.
10. "**End User**" or "Client" means an individual or entity to whom the Product(s) are made available by Customer for ordinary business.
11. "**End User Materials**" means the End User information and materials required by Company to fulfill a Customer order.
12. "**Error**" means a problem with the Product(s) to the extent that it fails to comply with the applicable documentation in all material respects.
13. "**Initial Term**" has the same meaning as specified in the Order Form.
14. "**Intellectual Property**" means any and all intellectual property rights worldwide arising under state and Federal statutory law, under common law, or by contract and whether or not perfected, including all: (i) trade dress, trademark, and service mark rights and the goodwill and applications associated therewith; (ii) patents, patent applications, and patent rights; (iii) rights associated with works or authorship including copyrights, copyright applications, copyright registrations, mask works rights, mask works applications, mask works registrations; (iv) rights relating to trade secrets and confidential information; (v) any rights analogous to those set forth in this section and any other proprietary rights relating to intellectual property;

(vi) divisional, continuations, renewals, reissues, and extension of the foregoing (as and to the extent applicable) now existing, hereafter filed, used or acquired, and whether registered or unregistered; (vii) domain names; and (viii) rights relating to derivative works.

15. **“Order Form”** means the ordering documents used for purchase of Product(s) and Services, including addenda, that are signed or electronically accepted by Customer and Company from time to time. Order Forms shall be deemed incorporated herein by reference.
16. **“Partner”** as used in the MSA/Order Form means “Customer” as defined herein. The use of the term “Partner,” or similar language, in no way is intended to create a legal Partnership and is solely intended as a business term, relating to the Company’s business practice.
17. **“Product(s)”** means the Company products, software, or services listed on the Order Form, as they may be changed from time to time upon mutual agreement of the parties.
18. **“Renewal Term”** has the same meaning as specified in the Order Form.
19. **“Services”** means the services provided by Company or other provider to the Customer or End User.
20. **“Source Code”** means the human-readable form of computer programming code, including all the modules it contains, and any associated interface definition files, scripts, instructions, or other materials that are used to control compilation and installation of an executable based upon such human-readable form of computer programming code.
21. **“Upgrade”** means any and all major and minor releases or other modifications to the Services and/or Product(s), including, but not limited to, maintenance fixes, refinements, derivatives, modifications, new modules, enhancements and/or other additional features, but does not include features, products or services otherwise identified and offered as separately priced products or services by Company to other third-party users (such as separately priced products or services, “Innovations”).
22. **“US”** shall mean the United States of America.

## 2. License Grant.

1. Subject to the terms and conditions of the Agreement, Company hereby grants to Customer and Affiliates a non-exclusive, fee-based, non-transferable (except as otherwise permitted in this Agreement), worldwide license to (i) distribute and sub-license access to, and use of, the Product(s) to End Users and (ii) promote, solicit and market Product(s) to prospective End Users with respect to the Product(s) including, without limitation, the right to internal use. Customer shall not have the right to sublicense or grant rights to any sub-distributors, resellers, or affiliates without advanced written approval from Company.
2. **Documentation.** Subject to the terms and conditions of the Agreement, Company hereby grants to Customer a non-exclusive, worldwide license to (i) reproduce and distribute any documentation provided by Company related to Products and/or Services (the “Documentation”); and (ii) modify and create derivative works of the Documentation and upon Company review and prior written approval, distribute the Documentation, and Customer’s modifications and derivative works of the foregoing, directly to End Users and prospective End Users in hard copy, electronically and other means, for purposes of marketing, training, and support.
3. **Customer Marks.** Customer hereby grants to Company a limited, non-transferable right and license to include the Customer’s trade names, trademarks (including logos and brand names), and service marks (collectively, the “Customer Marks”) in the Deliverables in accordance with the usage guidelines supplied to Company by Customer from time to time and provided such use is specifically prohibited by Customer.

### 3. License Terms, Limitations and Obligations.

1. **Ownership and Rights.** Company shall remain the sole owner of the Intellectual Property, Product(s), Tools and Documentation provided hereunder, and any rights in patents, copyrights, trademarks, trade secrets, moral rights, and any other proprietary rights related thereto. Company grants to Customer only the rights specifically stated in the Agreement and shall not affect the ownership of, nor convey any licenses or rights under any of the Intellectual Property to Customer or any other third party. All rights, title and interest not specifically granted by the Agreement are reserved to Company.
2. **Customer Compliance.** Customer shall use, and will ensure that all authorized Clients, users and End Users use, each platform, software, and the services in full compliance with this Agreement and all applicable laws and regulations. Customer represents and warrants that it (i) has accessed and reviewed any terms of use or other policies relating to a platform provided by Company, (ii) understands the requirements thereof, and (iii) agrees to comply therewith. Company may suspend Customer's account and access to each platform and performance of the services at any time and without notice if Company believes that Customer is in violation of this Agreement. Although Company has no obligation to monitor Customer's use of a platform, Company may do so and may prohibit any use it believes may be (or alleged to be) in violation of the foregoing.
3. **Training and Education.** Customer shall use commercially reasonable efforts to cause Customer's authorized users and End Users to be, at all times, educated and trained in the proper use and operation each platform that Customer's End Users utilize, and to ensure that each platform is used in accordance with applicable training, manuals, instructions, specifications and documentation provided by Company from time to time.
4. **Competitive Product(s).** During the term hereof, Customer shall not, directly or indirectly (i) develop and/or distribute products or services similar to or competitive with the Product(s) and Services,
5. **Restrictions.** Customer shall: (i) not itself nor permit or encourage any third party to disassemble, reverse engineer, reverse compile, or in any other way try to gain access to Confidential Information (defined in Section 9) regarding the construction of the Product(s), including without limitation underlying source code, object code or underlying structure, ideas, know-how or algorithms relevant to a platform or any software, documentation or data related to a platform; (ii) only use the Product(s) as permitted under the Agreement; and (iii) secure the Product(s) to the same or materially equivalent extent as Customer protects its own intellectual property or similar products or services. Customer shall not have the right to modify or create derivative works from the Product(s), whether on a stand alone basis or as part of a Customer product, software, or service, in any respect. Without limiting the foregoing, Customer shall not remove or alter any copyright or other proprietary notices or marks of Company affixed to or embedded in the Product(s), and shall include the same in all copies made by Customer to the extent permitted hereby. Except as may be affixed to or embedded in the Product(s) or otherwise consistent with purpose of the Agreement, Customer shall not use any marks of Company without Company's prior written consent.
6. **Derivative Works.** Customer hereby assigns any rights or perceived rights it may acquire in any derivative works. Should Customer or end-user make any improvements, enhancements or alterations to the Products, Customer shall promptly notify Company of such changes and provide Company with any know-how and the resources necessary to duplicate the change.
7. **Notification.** Customer shall promptly notify Company in writing of any perceived infringement of Company's Intellectual Property.

## 4. Compensation, Fees, and Taxes.

1. **Pricing.** All payments hereunder shall be made in US dollars. The pricing for all Product(s) and Deliverables by Customer and End Users shall be as set forth on the Order Form.
2. **Taxes.** The Fees and other amounts payable pursuant to the Agreement are exclusive of, and Customer shall pay, all federal, state, local, municipal or other sales, use, transfer, excise, VAT, property and other taxes and duties imposed with respect to the use, possession, resale, license, or delivery of the Product(s) or any Deliverable sold to, supplied to, or used by, the Customer or End User, except for taxes based on Company's net income. Customer shall obtain and provide to Company any certificate of exemption or similar document required to exempt any transaction under the Agreement from sales tax, use tax or other tax liability.
3. **Invoicing and Payment.** As consideration for Company's rendering of the Services and the other good and valuable consideration stated herein, Customer shall pay Company the fees specified on the Order Form ("Fees"). Customer will provide Company with valid and updated credit card information, ACH payment method, or check upon receipt of monthly invoices ("Payment Method"). If Customer provides credit card information to Company, Customer hereby authorizes Company to charge such credit card for all Products and Services set forth in the applicable Order Form for the initial subscription term and any renewal term whether on a one-time or recurring basis or both. Unless otherwise stated in the Order Form, invoiced charges are due within thirty (30) days of the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Company and for notifying Company of any changes to such information.
4. **Payment Disputes.** If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than fifteen (15) days after the closing date on the first billing statement in which the believed error or problem appeared in order to receive an adjustment or credit.
5. **No Deductions or Setoffs.** All amounts payable to Company hereunder shall be paid by Customer to Company in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason except as may be required by applicable law. If a payment dispute is made in favor of Customer then Customer shall receive a credit for any excess payment made by Customer.
6. **Overdue Charges; Suspension of Services.** If any payments are not received by Company by the due date then, at Company's discretion, such overdue charges may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. If any amount owing by Customer under this Agreement for Products and Services is thirty (30) or more days overdue, Company may, without limiting other available rights and remedies, accelerate any unpaid fee obligations under the Agreement so that all such obligations become immediately due and payable, and may suspend access to the Products and Services until such amounts are paid in full; provided that Company will give Customer at least seven (7) days' notice prior to suspending such access.

## 5. Publicity.

Upon receiving the other Party's prior written consent, Company and Customer may jointly use the others logos in any marketing materials, press releases, customer lists, or other publicity.

## 6. Representations and Warranties; Disclaimer.

1. **By Both Parties.** Each Party represents and warrants that:
  1. Under the laws of its jurisdiction or organization and governance documents, (i) it has full power and authority to enter into and perform the Agreement; (ii) the person signing the Agreement on behalf of each Party hereto has been properly authorized and empowered to enter into the Agreement; (iii) upon its duly authorized execution and delivery by a Party, the

Agreement will be a legally binding obligation of such Party; (iv) the performance of the Agreement will not conflict with its governing documents or any contract or commitment it has entered into; and (v) it will perform its obligations hereunder in compliance with all applicable federal, state and local laws.

2. It is the owner of all equipment and materials, including the intellectual property, that relate to, comprise or are otherwise used to provide the Deliverables to End Users;
  3. The intellectual property which it incorporates into the Deliverables, Services, or the Products including any assigned rights, does not, and will not, infringe any patent, copyright or trademark rights of any third party, under the laws of any United States government or any other governmental entity worldwide;
2. **By Company.** Company further warrants and represents that:
1. The Services performed under the Agreement will be performed in a timely, professional and workmanlike manner consistent with standard industry practices and procedures by qualified personnel and Company has the required skills and experience to perform its obligations set forth in the Agreement;
  2. The Products, Services, and Deliverables: (i) will conform to the acceptance criteria agreed upon by the Parties in good faith; and (ii) will comply with all law, including any rules, rulings and regulations of any applicable governmental entity; Company hereby passes through the manufacturer's warranty on any products and materials included in the Deliverables or Products, including on all third party product(s) and other materials acquired from Company by the Customer. Company shall have no obligation to make corrections, repairs or replacements to the Deliverables which result, in whole or in part, if the deficiency results from (i) catastrophe, fault or negligence of Customer, (ii) improper or unauthorized use of the Deliverables, or (iii) use of the Deliverables in a manner for which they were not designed;
  3. Where the Deliverables contain any production-ready Product(s) source code created by Company or its Affiliates ("Product(s)"), the Product(s) has passed Company internal quality assessment testing such that the Product(s) functions in accordance with the final specification and requirements document;
  4. If Company incorporates into any Product(s) source code licensed from GNU Public License, the Free Product(s) Foundation, or similar public license (collectively, "Open Source Product(s)") it will comply with all obligations related to such Open Source Product(s).
3. **By Customer.** Company further warrants and represents that:
1. Customer understands that Company plans to offer use of the Product(s) to others. Those uses shall not constitute a violation of the Agreement. THE SERVICES ARE PROVIDED "AS IS". CUSTOMER ASSUMES THE RESPONSIBILITY FOR DETERMINING THE SUITABILITY OF THE SERVICES, FOR ITS USE AND FOR THE USE OF ITS END USERS. COMPANY MAKES NO WARRANTY THAT ALL ERRORS HAVE BEEN OR CAN BE ELIMINATED FROM THE SERVICES, EXCEPT AS EXPRESSLY STATED HEREIN, AND COMPANY SHALL IN NO EVENT BE RESPONSIBLE FOR ANY LIABILITY FOR BUSINESS EXPENSES, MACHINE DOWNTIME, OR ANY OTHER DAMAGES CAUSED TO CUSTOMER OR ITS END USERS BY ANY DEFICIENCY, DEFECT, ERROR, OR MALFUNCTION THAT RESULTS IN THE LOSS OF CUSTOMER OR END USER DATA, OR ERRORS OR NON-PERFORMANCE OR RESTRICTIONS OF THIRD PARTIES OR THIRD-PARTY PRODUCT PROVIDING SERVICES TO CUSTOMER OR END USERS. Without limiting the generality of the foregoing, except with respect to credits for loss of service availability as provided in the Agreement, Company is not liable for loss of service, access, or data for any reason including,

but not limited to, any unforeseen or preventable failure related to changes in infrastructure or telecommunication traffic capabilities, failure or breakdown of the Internet, the World Wide Web, any related telecommunications equipment or systems, or any computer hardware or Product(s).

2. Customer understands that Company provides Customer the ability to sync data with third party data sources for Customer to analyze the data for internal purposes and prepare Products for its End Users. Company does not alter the data provided by the third parties and Company is not responsible for the accuracy of third-party data. Customer further agrees that it has a separate contractual relationship with the third parties and nothing in this agreement modifies Customer's contractual obligations to such third parties.
4. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE OR TO ANY OTHER MATERIALS, GOODS OR SERVICES FURNISHED TO CUSTOMER HEREUNDER, AND HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED REPRESENTATIONS, WARRANTIES, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE USE OR PERFORMANCE OF THE SERVICE. Company makes no warranty that the Product(s) shall operate uninterrupted or be error free.

## 7. Indemnification.

1. **Indemnity By Company.**
  1. Company shall indemnify and hold harmless Customer and its officers, directors, employees, agents, successors, and permitted assigns against any and all losses that arise out of or relate to a claim arising out of or related to or in connection with: (i) any claim that any Deliverable, Product, or any of the Services infringe any valid US patent or the US copyright, trade secret, trademark right of a third party; (ii) any breach of the terms, obligations and covenants of the Agreement by Company; or (iii) any breach by Company of any representation or warranty of Company set forth in the Agreement. Notwithstanding the foregoing, in no event shall Company be liable for any third-party claim, demand or suit based on or related to (a) Indemnified Parties' use or directed use for a purpose or in a manner for which the Product(s) was not designed; (b) Indemnified Parties' use or directed use of any older version of the Product(s) when use of a newer version of the Product (which newer version is functionally-equivalent or better and which is compatible with the prior infringing version) which Company has made available to Customer under the Agreement would have avoided the infringement; (c) any modification not made with Company's written approval; (d) any modifications made by Company pursuant to Customer's specific instructions; or (e) the combination, operation or use of the Product(s) with equipment, data or Product(s) not furnished by or approved by Company if such infringement could have been avoided through the use of other equipment, data or Product(s), or by the avoidance of use with equipment, data or Product(s) not provided by Company, or (f) any acts of willful misconduct and/or negligence of Indemnified Parties, including its officers, directors, agents and employees. In connection with the foregoing, Indemnified Parties shall provide Company with (i) prompt written notice of any claim under this Section (but late notice shall not void Company's obligations in this Section unless the lateness itself completely prejudices Company's ability to fulfill its obligations), and (ii) reasonable cooperation and assistance, at Company's expense, with regard to such claim. When settling or compromising any claim, Company shall not, without Customer's written approval, such approval to not be unreasonably withheld,

conditioned or delayed, make any material admission of facts or liability whatsoever regarding Customer or its Affiliates.

2. **Remedies.** Should the Product(s), Deliverable(s), or Services or use of the Product(s), Deliverable(s), or Services become, or in Company's opinion likely to become, the subject of a claim, Company shall, at its own option and expense, either (i) procure the right for the Indemnified Parties to continue using such, or (ii) replace or modify the Product, Deliverable, or Service with a compatible, functionally-equivalent replacement/modification so that it no longer infringes or misappropriates. If neither (i) nor (ii) above are commercially feasible, Company shall be entitled to terminate the Agreement and shall refund Fees paid by Customer to Company therefor to the extent Customer is required to reimburse its End Users such amounts, subject to Section 10.3.2 below.
  3. **Sole Remedy.** THE FOREGOING ARE COMPANY'S SOLE AND EXCLUSIVE OBLIGATIONS AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR ANY OTHER BREACH UNDER THE AGREEMENT.
2. **Indemnity By Customer.** Customer shall, at its expense, defend, indemnify and hold harmless Company (including its officers, directors and employees) ("Company Indemnified Parties") from and against any third-party liabilities, claims, demands or suits in connection with (A) Customer's distributing or marketing any Customer product(s) (excluding claims for which Company is obligated to defend under this Section), (B) Customer's breach of the Agreement, (C) Customer's breach of any agreement that it has with any End User; or (D) Customer's violation of applicable law. In connection with the foregoing, Company shall provide Customer (i) prompt notice of such claim (but late notice shall not void Customer's obligations in this Section unless the lateness itself prejudiced Customer's ability to fulfill its obligations) and (ii) reasonable cooperation and assistance, at Customer's expense, with regard to such claim. When settling or compromising any claim, Customer shall not, without Company's written approval, make any admission of facts or liability whatsoever regarding Company.
  3. **Procedure.** A Party seeking indemnification for a claim under the Agreement (the "Indemnified Party") shall promptly notify the other Party (the "Indemnifying Party") in writing of the claim, but the failure to do so shall not relieve the Indemnifying Party of any obligation or liability hereunder except to the extent the Indemnifying Party has been materially prejudiced thereby. The Indemnifying Party may elect, by written notice to the Indemnified Party within 10 days after receiving notice of such claim, to assume the defense thereof with counsel. If the Indemnifying Party does not so elect to assume such defense or the Indemnifying Party has not responded within ten days following receipt of such notice, then the Indemnified Party shall retain counsel to defend such claim, at the Indemnifying Party's expense. The Indemnified Party shall have the right, at its own expense, to participate in the defense of any Claim against which it is indemnified hereunder and for which the Indemnified Party has assumed the defense. In defending such Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party consent to entry of any judgment or enter into any settlement which: (i) does not include, as an unconditional term, the grant by the claimant to Indemnified Party a release of all claims and liabilities; or (ii) otherwise adversely affects the rights of the Indemnified Party. Should the Indemnifying Party refuse to indemnify the requesting Party because the Indemnifying Party believes the claim falls outside the indemnified Claims, then the Parties agree to submit to Arbitration, in accordance with the Arbitration clause herein, the sole issue of whether the claim falls within the indemnified Claims.

**8. Data and  
Privacy.**

1. **Personally Identifiable Information.** Customer and Company will take reasonable steps to protect End User's Personally-Identifiable Information ("PII") and shall comply with all applicable laws related to protection of PII. PII includes, but is not limited to, End User's name, address, telephone number, e-mail, or IP address and any other information that can be used to obtain the identity, address, or any other unique information about the End User, including, without limitation, all derivations, compilations, or analysis which includes any such information
2. **Confidential Information.** The parties understand and agree that in the performance of the Agreement each Party may have access to private or confidential information of the other Party, including, but not limited to, trade secrets, marketing and business plans, technical information, Client information, which is designated as confidential by the disclosing Party in writing or which the receiving Party knew or should have known was confidential, including all data and information obtained by Company that is related to, or provided by, End Users (collectively, "Confidential Information"). The parties agree that the terms of the Agreement, but not its existence, including without limitation its financial terms and any reports delivered by a Party hereunder, shall be deemed Confidential Information owned by the Party delivering the reports.
3. **Exceptions.** Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (i) is or becomes a part of the public domain through no act or omission on the part of the receiving Party; (ii) is disclosed to a third person by the disclosing Party without restriction on such third person; (iii) is in the receiving Party's possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under or in connection with the Agreement, whether received prior to or after the date of the Agreement; (iv) is disclosed to the receiving Party by a third person having no obligation of confidentiality with respect thereto; (v) is independently developed by the receiving Party without reference to the disclosing Party's Confidential Information; (vi) is released from confidential treatment by written consent of the disclosing Party; or (vii) is required to be disclosed by law, provided that, to the extent practicable under the circumstances, the receiving Party gives sufficient notice to the disclosing Party in advance of such disclosure to enable the disclosing Party to seek legal recourse to prevent such disclosure.
4. **Obligations of Confidentiality.** As between the Parties, all Confidential Information shall remain the exclusive property of the disclosing or owning Party, as applicable and each Party shall use prudent methods to protect the Confidential Information of the other Party, including ensuring that its employees and agents do not, copy, publish, disclose to others, or use (other than pursuant to the terms hereof) the Confidential Information.
5. **Security.** If Company will be given access to Customer's computer system(s) or product(s) ("Systems") in connection with use or performance of the Product(s), Company shall comply with Customer's system security policies, as may be revised by Customer from time to time and will not tamper with, compromise or circumvent any security or audit measures employed by Customer. Failure to comply with the System security policies shall be a breach of the Agreement entitling Customer to immediately terminate the Agreement. Company may, from time to time, host and/or maintain a platform using a third party technology service provider and Customer acknowledges that company cannot offer any additional or modified procedures other than those put in place by such technology provider with respect to such technology service.
6. **Remedies for Breach of Obligation of Confidentiality.** The receiving Party acknowledges that breach of its obligation of confidentiality may cause irreparable harm to the disclosing Party for which the disclosing Party may not be fully or adequately compensated by recovery of monetary damages. Accordingly, in the event of any violation, or threatened violation, by the receiving Party of its obligations under this Section, the disclosing Party shall be entitled to seek injunctive relief from a court of



competent jurisdiction in addition to any other remedy that may be available at law or in equity, without the necessity of posting bond or proving actual damages.

**9. Term; Termination; Effect of Termination.**

1. **Term.** The Agreement shall commence and terminate as indicated on the Order Form.
2. **Termination.**
  1. **Uncured Breach.** If a Party breaches any provision contained in the Agreement, and such breach is not cured within 90 days after receiving written notice of such breach from the other Party, then the non-breaching Party may deliver a second written notice to the breaching Party terminating the Agreement, constituting termination for Cause. In which event the Agreement, and any rights granted hereunder shall terminate for Cause on the date specified in such second notice.
  2. **Termination for Material Breach.** If either Party believes that the other has breached a material provision of the Agreement, then it shall notify the other in writing, specifying in reasonable detail the alleged breach and supporting facts. If the breaching Party has not remedied the alleged breach within thirty (30) days after the written notice thereof, the breaching Party may terminate the Agreement upon written notice with immediate effect, constituting termination for Cause.
  3. **Insolvency.** In the event that any Party shall be adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against such Party and said petition is not discharged within 30 days after such filing, or upon any assignment for the benefit of its creditors, or upon the appointment of a receiver, liquidator or trustee of any of its assets, or upon the liquidation, dissolution or winding up of its business (an "Event of Bankruptcy"), then the Party affected by any such Event of Bankruptcy shall immediately give notice thereof to the other parties, and either of the other parties at its option may terminate the Agreement, and the licenses and rights granted hereunder, upon written notice, constituting termination for Cause.
3. **Effect of Termination; Wind Down Period; Survival.**
  1. **Upon Termination.** Upon expiration or termination of the Agreement for any reason ("Termination"), Company shall invoice Customer for amounts due and payable at such time. Further, each Party, at its expense, shall either destroy or return to the other Party within five business days all copies of the other Party's Confidential Information.
  2. **Termination Assistance.** Upon Termination, Customer will cease marketing and selling, the Product(s) and Deliverables. At Customer's request, however, Company shall, for a period of up to one month after the Termination, or written extension thereof (the "Termination Assistance Period") (i) continue to provide access, use, and possession of the Product(s) (or portion thereof) for Customer or those End Users who request them; (ii) cooperate with Customer or another service provider designated by Customer in the transfer of information relevant to the Customer or such other service provider; and (iii) perform any other services reasonably requested by Customer to accommodate such transition (the services in clauses (i) through (iii), the "Termination Assistance Services"). The parties shall negotiate rates for the Termination Assistance Services.
  3. **Survival.** Any provision of the Agreement that by its very nature or context is intended to survive termination shall survive.

## 10. Miscellaneous.

- 1. Notices.** All notices, consents, approvals, requests, claims, demands and other communications hereunder (collectively, "Notices") shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy, by national overnight courier service (such as, Federal Express, DHL, Airborne, UPS), or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the addresses on the Order Form or the signature page of the Agreement (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section).
- 2. Severability.** The Agreement shall be enforced to the fullest extent permitted by applicable law. If any provision of the Agreement is held to be invalid, illegal or incapable of being enforced to any extent, then such provision shall be interpreted, construed and reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision, and while all other terms and provisions of the Agreement shall nevertheless remain in full force and effect.
- 3. Assignment.** Neither Party shall assign or transfer the Agreement by operation of law or otherwise without the prior written consent of the other Party, except in connection with a change of control in which case such assignment shall not be required unless the change of control involves a direct competitor of the non-assigning Party. The Agreement shall be binding upon and inure to the benefit of the successors and the permitted assigns of the respective Parties hereto.
- 4. Limitation on Certain Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF THE PARTIES ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S AGGREGATE LIABILITY FOR ANY CLAIMS OR DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM. THE FOREGOING SHALL NOT SERVE TO LIMIT, IN ANY WAY, (I) EITHER PARTY'S CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT, AND (II) EITHER PARTY'S RIGHTS TO STATUTORY DAMAGES BASED ON INFRINGEMENT BY THE OTHER PARTY OF THE TRADEMARK OR COPYRIGHT RIGHTS OF THE AGGRIEVED PARTY.
- 5. Governing Law and Arbitration.** All disputes under the Agreement shall be governed by the laws of the State of California, without reference to its conflicts of law provisions, and shall be resolved exclusively in the State of California. The Parties agree that any dispute arising out of or relating to this Agreement, or its subject matter, where the aggregate amount of damages sought exceeds twenty five thousand dollars (\$25,000), shall be resolved exclusively by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any claims that seek less than \$25,000 in the aggregate must be filed in a California State Court of limited jurisdiction. When seeking resolution by arbitration, either party may send a notice to the other party of its intention to file a case with the AAA under this Section ("Arbitration Notice"). The arbitration will be conducted in San Jose, California by a single arbitrator knowledgeable in the commercial aspects of "software as a service" arrangements and intellectual property. The parties will mutually appoint an arbitrator within thirty (30) days of the Arbitration Notice. If the parties are unable to agree on an arbitrator, then the AAA will appoint an arbitrator who meets the foregoing knowledge requirements. The arbitration hearing will commence within sixty (60) days after the appointment of the arbitrator and the hearing will be completed and an award rendered in writing within sixty (60) days after the commencement of the hearing. Prior to the hearing, each party will have the right to take up to four (4) evidentiary depositions, and exchange two

(2) sets of document production requests and two sets, each, of not more than ten (10) interrogatories. The arbitrator will provide detailed written explanations to the parties to support their award and regardless of outcome, each party shall pay its own costs and expenses (including attorneys' fees) associated with the arbitration proceeding and fifty percent (50%) of the fees of the arbitrator and the AAA. The arbitration award will be final and binding and may be enforced in any court of competent jurisdiction. Each Party agrees to accept services of process by mail, consent to the jurisdiction of such courts, and hereby waive any jurisdictional or venue defenses otherwise available to it. The Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

6. **Waiver.** All claims in court or arbitration, arising from or related to this Agreement, must be made within twelve-months (12) after having notice of the claim or potential claim. All claims not properly made within twelve-months (12) will be deemed waived.
7. **Headings.** Section headings are for the convenience of the parties and shall not affect the meaning, construction or interpretation of the text of the Agreement.
8. **Relationship of the Parties.** This Agreement is not intended to create, and does not create, any partnership, joint venture, agency, fiduciary, employment, or other relationship between the parties, beyond the relationship of independent parties to a commercial contract. Neither party is, nor will either party hold itself out to be, vested with any authority to bind the other party contractually, or to act on behalf of the other party as a broker, agent, or otherwise. Each of Customer and Company alone shall be responsible for payment of all remuneration to its employees and bear all taxes associated therewith.
9. **Controlling Language.** The Agreement is in English only, which language shall be controlling in all respects. All documents exchanged under the Agreement shall be in English.
10. **Authority.** The person signing the Agreement and the Order Form on behalf of each Party below acknowledges that he or she is binding the entire company or entity and has the authority to do so.
11. **Entire Agreement.** This Agreement together with each applicable Order Form and any other mutually agreed upon exhibits or attachments sets forth the entire understanding of the Parties with respect to the subject matter hereof. This Agreement shall not be amended or modified except by written instrument duly executed by authorized signatories of both Parties. Any and all previous Agreements, representations, and understandings between the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement and of no further force and effect. Any waiver of a breach or violation of this Agreement must be in writing in each instance.
12. **Force Majeure.** Neither Party will be liable for delay, default, or inadequate performance to the extent caused by a condition (including, without limitation, fire, flood, natural disaster, act of war or terrorism, riot, labor condition, acts of God, governmental action, and Internet disturbance) that was beyond the Party's reasonable control.
13. **Counterparts.** This Agreement may be executed in multiple counterparts, including facsimile, PDF, or other electronic copies, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement. PDF or facsimile signatures shall be deemed to be of the same force and effect as original signatures and legally binding and admissible in any court or tribunal of competent jurisdiction.
14. **Government Rights.** The Product(s), Services, and Documentation are "Commercial Items" as that term is defined at 48 CFR 2.101 consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" as such terms are used in 48 CFR 12.212 or 48 CFR 227.7202, as applicable. The rights to the Product(s), Services, and Documentation are granted to U.S. Government end users (a) only as Commercial Items and (b) only with those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

15. **Export Control.** You will not ship, transfer, or export the Product(s) to any country, nor will You use the Product(s) in any manner prohibited by the United States Export Administration Act or any other export laws national or international, restrictions or regulations that apply to the Product(s). You agree to indemnify and hold Company harmless for any violation of this provision.
16. **Terms & Conditions Updates.** Company may update these Customer Terms and Conditions from time-to-time and post the updated version at <http://bit.ly/PtnrTCS>. The Customer Terms and Conditions posted at the time of signing any Order Form, Statement of Work, or other related agreement, will govern for the Initial Term of the Agreement. However, upon renewal of this Agreement, the then-current Terms and Conditions will govern for the next Renewal Term.